



General Assembly

January Session, 2009

***Amendment***

LCO No. 5502

\*SB0087105502SR0\*

Offered by:  
SEN. FASANO, 34<sup>th</sup> Dist.

To: Subst. Senate Bill No. 871

File No. 146

Cal. No. 168

***"AN ACT INCREASING THE ENFORCEMENT AUTHORITY OF THE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION."***

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. Section 22a-6b of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2009*):

5 (a) The Commissioner of Environmental Protection shall adopt  
6 regulations, in accordance with the provisions of chapter 54, to  
7 establish a schedule setting forth the amounts, or the ranges of  
8 amounts, or a method for calculating the amount of the civil penalties  
9 which may become due under this section. Such schedule or method  
10 may be amended from time to time in the same manner as for  
11 adoption provided any such regulations which become effective after  
12 July 1, 1993, shall only apply to violations which occur after said date.  
13 The civil penalties established for each violation shall be of such  
14 amount as to insure immediate and continued compliance with  
15 applicable laws, regulations, orders and permits. Such civil penalties

16 shall not exceed the following amounts:

17 (1) For failure to file any registration, other than a registration for a  
18 general permit, for failure to file any plan, report or record, or any  
19 application for a permit, for failure to obtain any certification, for  
20 failure to display any registration, permit or order, or file any other  
21 information required pursuant to any provision of section 14-100b or  
22 14-164c, subdivision (3) of subsection (b) of section 15-121, section 15-  
23 171, 15-172, 15-175, 22a-5, 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-  
24 45a, chapter 441, sections 22a-134 to 22a-134d, inclusive, subsection (b)  
25 of section 22a-134p, section 22a-171, 22a-174, 22a-175, 22a-177, 22a-178,  
26 22a-181, 22a-183, 22a-184, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-220,  
27 22a-231, 22a-245a, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a,  
28 22a-354p, 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-  
29 405, inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive,  
30 22a-447, 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or  
31 22a-471, or any regulation, order or permit adopted or issued  
32 thereunder by the commissioner, and for other violations of similar  
33 character as set forth in such schedule or schedules, no more than one  
34 thousand dollars for said violation and in addition no more than one  
35 hundred dollars for each day during which such violation continues;

36 (2) For deposit, placement, removal, disposal, discharge or emission  
37 of any material or substance or electromagnetic radiation or the  
38 causing of, engaging in or maintaining of any condition or activity in  
39 violation of any provision of section 14-100b or 14-164c, subdivision (3)  
40 of subsection (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5,  
41 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-45a, chapter 441, sections  
42 22a-134 to 22a-134d, inclusive, section 22a-69 or 22a-74, subsection (b)  
43 of section 22a-134p, section 22a-162, 22a-171, 22a-174, 22a-175, 22a-177,  
44 22a-178, 22a-181, 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a, 22a-209,  
45 22a-213, 22a-220, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a,  
46 22a-354p, 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-  
47 405, inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive,  
48 22a-447, 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or  
49 22a-471, or any regulation, order or permit adopted thereunder by the

50 commissioner, and for other violations of similar character as set forth  
51 in such schedule or schedules, no more than twenty-five thousand  
52 dollars for said violation for each day during which such violation  
53 continues;

54 (3) For violation of the terms of any final order of the commissioner,  
55 except final orders under subsection (d) of this section and emergency  
56 orders and cease and desist orders as set forth in subdivision (4) of this  
57 subsection, for violation of the terms of any permit issued by the  
58 commissioner, and for other violations of similar character as set forth  
59 in such schedule or schedules, no more than twenty-five thousand  
60 dollars for said violation for each day during which such violation  
61 continues;

62 (4) For violation of any emergency order or cease and desist order of  
63 the commissioner, and for other violations of similar character as set  
64 forth in such schedule or schedules, no more than twenty-five  
65 thousand dollars for said violation for each day during which such  
66 violation continues;

67 (5) For failure to make an immediate report required pursuant to  
68 subdivision (3) of subsection (a) of section 22a-135, or a report required  
69 by the department pursuant to subsection (b) of section 22a-135, no  
70 more than twenty-five thousand dollars per violation per day;

71 (6) For violation of any provision of the state's hazardous waste  
72 program, no more than twenty-five thousand dollars per violation per  
73 day;

74 (7) For wilful violation of any condition imposed pursuant to  
75 section 26-313 which leads to the destruction of, or harm to, any rare,  
76 threatened or endangered species, no more than ten thousand dollars  
77 per violation per day;

78 (8) For violation of any provision of sections 22a-608 to 22a-611,  
79 inclusive, no more than the amount established by Section 325 of the  
80 Emergency Planning and Community Right-To-Know Act of 1986 (42

81 USC 11001 et seq.) for a violation of Section 302, 304 or 311 to 313,  
82 inclusive, of said act.

83 (b) In adopting regulations regarding any schedule or methods  
84 prescribed by this section, the commissioner shall consider:

85 (1) The amount or ranges of amounts of assessment necessary to  
86 insure immediate and continued compliance;

87 (2) The character and degree of impact of the violation on the  
88 natural resources of the state, especially any rare or unique natural  
89 phenomena;

90 (3) The conduct of the person incurring the civil penalty in taking all  
91 feasible steps or procedures necessary or appropriate to comply or to  
92 correct the violation;

93 (4) Any prior violations by such person of statutes, regulations,  
94 orders or permits administered, adopted or issued by the  
95 commissioner;

96 (5) The economic and financial conditions of such person;

97 (6) The economic benefit which such person derived as a result of  
98 the violation;

99 (7) The character and degree of injury to, or interference with, public  
100 health, safety or welfare which is caused or threatened to be caused by  
101 such violation;

102 (8) The character and degree of injury or impairment to, or  
103 interference with, reasonable use of property which is caused or  
104 threatened to be caused by such violation;

105 (9) The character and degree of injury or impairment to, or  
106 interference with, the public trust in the air, water, land and other  
107 natural resources of the state;

108 (10) To the extent consistent with applicable law, any other factors

109 the commissioner deems appropriate, including voluntary measures  
110 taken by such person to prevent pollution or enhance or preserve  
111 natural resources;

112 (11) In the case of violation of the provisions of subdivision (3) of  
113 subsection (a) of section 22a-135, the apparent seriousness of the  
114 release, occurrence, incident or other circumstance at the time it first  
115 became known to the licensee or any employee of such licensee, the  
116 extent of the delay from the time such licensee or employee had or in  
117 the exercise of reasonable care should have had knowledge of such  
118 release, occurrence, incident or circumstance until its reporting by the  
119 licensee in accordance with this subsection, subsection (a) of this  
120 section and sections 16-19g and 22a-135, and the conduct of the  
121 licensee in taking all necessary steps to prevent future violations of the  
122 provisions of said subdivision.

123 (c) If the commissioner has reason to believe that a violation has  
124 occurred for which a civil penalty is authorized by this section, [he] the  
125 commissioner may send to the violator, by certified mail, return receipt  
126 requested, or personal service, a notice which shall include:

127 (1) A reference to the sections of the statute, regulation, order or  
128 permit involved;

129 (2) A short and plain statement of the matters asserted or charged;

130 (3) A statement of the amount of the civil penalty or penalties or the  
131 method for calculating the penalty or penalties to be imposed upon  
132 finding after hearing that a violation has occurred or upon a default;  
133 and

134 (4) A statement of the party's right to a hearing.

135 (d) The person to whom the notice is addressed shall have thirty  
136 days from the date of receipt of the notice in which to deliver to the  
137 commissioner written application for a hearing. If a hearing is  
138 requested then, after a hearing and upon a finding that a violation has

139 occurred, the commissioner may issue a final order assessing a civil  
140 penalty under this section which is not greater than the penalty stated  
141 in the notice. The commissioner may amend a notice of assessment at  
142 any time before such notice becomes final, provided the person to  
143 whom the notice is addressed shall have thirty days from the date of  
144 receipt of such amendment in which to deliver to the commissioner a  
145 written application for a hearing on such amendment, and provided  
146 further the commissioner may amend a notice of assessment after a  
147 hearing has begun only with the permission of the hearing officer. If  
148 such a hearing is not so requested, or if such a request is later  
149 withdrawn, then the notice shall, on the first day after the expiration of  
150 such twenty-day period or on the first day after the withdrawal of such  
151 request for hearing, whichever is later, become a final order of the  
152 commissioner and the matters asserted or charged in the notice shall  
153 be deemed admitted unless modified by consent order, which shall be  
154 a final order. Any civil penalty may be mitigated by the commissioner  
155 upon such terms and conditions as the commissioner in the  
156 commissioner's discretion deems proper or necessary upon  
157 consideration of the factors set forth in subsection (b) of this section.

158 (e) All hearings under this section shall be conducted pursuant to  
159 sections 4-176e to 4-184, inclusive. The final order of the commissioner  
160 assessing a civil penalty shall be subject to appeal as set forth in section  
161 4-183, except that any such appeal shall be taken to the superior court  
162 for the judicial district of New Britain and shall have precedence in the  
163 order of trial as provided in section 52-191. Such final order shall not  
164 be subject to appeal under any other provision of the general statutes.  
165 No challenge to any notice of assessment or final order of the  
166 commissioner assessing a civil penalty shall be allowed as to any issue  
167 which could have been raised by an appeal of an earlier order, notice,  
168 permit, denial or other final decision by the commissioner. Any civil  
169 penalty authorized by this section shall become due and payable (1) at  
170 the time of receipt of a final order in the case of a civil penalty assessed  
171 in such order after a hearing, (2) on the first day after the expiration of  
172 the period in which a hearing may be requested if no hearing is

173 requested, or (3) on the first day after any withdrawal of a request for  
174 hearing.

175 (f) Any person acting within the terms and conditions of a final  
176 order or permit issued to him by the commissioner shall not be subject  
177 to a civil penalty, under this section, for such actions.

178 (g) In lieu of imposing a civil penalty authorized by this section, the  
179 commissioner may enter into an agreement with the violator requiring  
180 the violator to invest in anti-pollution technology, equipment or  
181 improvements in an amount equivalent to the civil penalty authorized  
182 by this section.

183 [(g)] (h) A civil penalty assessed in a final order of the commissioner  
184 under this section may be enforced in the same manner as a judgment  
185 of the Superior Court. Such final order shall be served in person or by  
186 certified mail, return receipt requested. Any notice of violation or final  
187 order against a private corporation shall be served upon at least one of  
188 the individuals enumerated in section 52-57. After entry, a transcript of  
189 such final order may be filed by the commissioner, without requiring  
190 the payment of costs as a condition precedent to such filing, in the  
191 office of the clerk of the superior court in any one or more of the  
192 following judicial districts: Any judicial district in which the  
193 respondent resides, any judicial district in which the respondent has a  
194 place of business, any judicial district in which the respondent owns  
195 real property and any judicial district in which any real property  
196 which is a subject of the proceedings is located; or, if the respondent is  
197 not a resident of the state of Connecticut, in the judicial district of  
198 Hartford. Upon such filing, such clerk or clerks shall docket such order  
199 in the same manner and with the same effect as a judgment entered in  
200 the superior court within the judicial district. Upon such docketing,  
201 such order may be enforced as a judgment of such court.

202 [(h)] (i) The provisions of this section, sections 22a-2, 22a-6, 22a-6a,  
203 22a-7, sections 22a-428, subsection (d) of section 22a-430, sections 22a-  
204 431, 22a-432, 22a-433, 22a-437 and subsections (b) and (c) of section

205 22a-459 are in addition to and in no way derogate from any other  
206 enforcement provisions contained in any statute administered by the  
207 commissioner. The powers, duties and remedies provided in such  
208 other statutes, and the existence of or exercise of any powers, duties or  
209 remedies hereunder or thereunder shall not prevent the commissioner  
210 from exercising any other powers, duties or remedies provided herein,  
211 therein, at law or in equity.

212 [(i)] (j) No penalty shall be assessed pursuant to this section which  
213 exceeds two hundred thousand dollars or such other amount as may  
214 be provided by federal law.

215 Sec. 502. Subsection (b) of section 22a-6e of the general statutes is  
216 repealed and the following is substituted in lieu thereof (*Effective*  
217 *October 1, 2009*):

218 (b) The commissioner, or his designee, shall render a final decision  
219 to assess the administrative civil penalties established pursuant to this  
220 section, and shall collect such penalties, in accordance with the  
221 procedures specified in subsections (c) to [(g)] (h), inclusive, of section  
222 22a-6b, as amended by this act. The commissioner may amend a notice  
223 of assessment at any time before such notice becomes final, provided  
224 the person to whom the notice is addressed shall have thirty days from  
225 the date of receipt of such amendment in which to deliver to the  
226 commissioner a written application for a hearing on such amendment,  
227 and provided further the commissioner may amend a notice of  
228 assessment after a hearing has begun only with the permission of the  
229 hearing officer. No challenge to any notice of civil penalty assessment  
230 shall be allowed as to any issue which could have been raised by an  
231 appeal of an earlier order, notice permit, denial or other final decision  
232 by the commissioner.

233 Sec. 503. Section 22a-75 of the general statutes is repealed and the  
234 following is substituted in lieu thereof (*Effective October 1, 2009*):

235 The commissioner may set schedules and assess civil penalties for  
236 any violation of this chapter pursuant to sections 22a-6a and 22a-6b, as



237 amended by this act. Notice, hearing and appeal procedures shall be  
238 made pursuant to subsections (c) to [(h)] (i), inclusive, of section 22a-  
239 6b, as amended by this act."